IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 12797 of 2007(W)

AGAINST THE ORDER IN IA 218/2007 IN
OS.379/2004 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

SASIDHARAN PILLAI, AGED 57,
S/O.PARAMESWARAN PILLAI, MULLASSERIL,
PADEETTETHIL, EDAKUNNAM, NOORANAD.

BY ADV. SRI.R.PADMAKUMAR
SRI.V.VIJULAL
SRI.R.T.PRADEEP

RESPONDENTS:

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1. RAVEENDRAN NAIR, GOURI BHAVANAM,
PUTHUPPALLY KUNNAM, CHARUMMOOD.

2. BEENA KUMARY OF DO.

BY ADV. SRI.P.JACOB VARGHESE
SRI.RASHEED C.NOORANAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

wp(c) 12797/07

Appendix

Petitioner's Exts:
Ext.P1 true copy of plaint in OS 379/04 (before the M.C.Mavelikkara) filed by respondents.

Ext.P2 true copy of written statement dated 9.3.05

Ext.P3 true copy of order of injunction dated 23.3.05 in I.A.555/05 in O.S.379/04 Munsiff's Court, Mavelikara.

Ext.P4 true copy of I.A. No.218/07 dated 28/1/07 filed by petitioner before M.C. Mavelikkara.

Ext.P5 true copy of objection to I.A. 218/07 dated 5.2.07 filed by respondents before M.C. Mavelikkara.

Ext.P6 true copy of order in I.A.218/07 in O.S. 379/04 dated 3.3.07 of Munsiff's Court, Mavelikkara.

M.N.Krishnan, J.

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W.P(C).No.12797 of 2007

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Dated this the 13th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order in I.A.No.218 of 2007 in O.S.No.379 of 2004 of the Munsiff's Court, Mavelikara. It is an I.A. filed by the defendant, who has also filed counter claim under Section 151 of Code of Civil Procedure for permitting him to construct a shop room in the same dimension of the demolished shop room as noted by the Commissioner at the same place and to conduct Vaidyasala that was in existence till 9.9.2006. The suit is filed by the plaintiff seeking for a permanent injunction to restrain the petitioner from making material alterations in the plaint schedule shop room.

2. The defendant disputed the same and has filed a counter claim and they are all matters pending consideration before the court. Learned counsel for the writ petitioner submits that there was an order of injunction granted against the plaintiffs and in

utter violation of the same, they had demolished the subject matter of the suit and therefore he has filed an application as I.A.No.1734 of 2006 to prosecute the plaintiffs for violation of the injunction passed under Order 39 Rule 2A of Code of Civil Procedure.

3. The present petition is filed to construct a building where it stood because of the alleged act of the plaintiffs in the case. In these types of matters when there is an interim order passed by the court rightly or wrongly and when there is a violation of the order of the court, the courts are certainly under law, entitled to direct the party who had changed the position to restore the property into its original possession by interim orders. It has also to be cautioned that the orders being in the form of mandatory injunction it has to be granted after meticulous scrutiny and after the court gets convinced about the necessity of the same. The present order does not deal with the violation of the order of the court. So in order to enable the court to consider the prayer which is made in this petition, it has to be established first that in violation of the order of the court the plaintiffs in the suit have demolished the building and thereby

caused grave injustice to the defendant and therefore, they should be not only punished for the violation of the order, but should be directed to restore the property into its original position. In order to arrive at such a decision, the facts to be proved are that the building has been demolished by the plaintiffs and that it is in violation of the order of the court.

4. I am informed that there are several other parallel proceedings by and against the Panchayaths and there are decisions rendered by this Court in the matter. They are all matters, which can be considered by the court below at the time of deciding the petition for violation of injunction under Order 39 Rule 2A of Code of Civil Procedure. Therefore, before attempting to consider the question involved in the present I.A., I feel that there must be a decision on the violation of injunction petition and if the court finds that there is violation of injunction, then the court may in its discretion exercise the power to direct the plaintiffs to restore the property into its original position even during the pendency of the proceedings. Therefore, I make it very clear that irrespective of the decision made by the Munsiff in the application, the Munsiff is directed to consider Order 39 Rule

2A of Code of Civil Procedure petition after permitting both sides to adduce both documentary and oral evidence in support of their contentions and at the time of taking decision in the matter to consider the prayer incorporated in the application whether a direction has to be given to the plaintiffs to restore the property into its original position and pass orders accordingly. I am not dealing with the factual matrix of the case and I am informed that there had been large number of legal proceedings which may have to be considered by the court while disposing of those applications. I make it clear that violation of injunction petition has to be proceeded independently and should not be tackled on with the trial of the case. I.A.No.1734 and I.A.No.1735 of 2006 also may be considered.

With these observations, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

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